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 7 MICHAEL P. MCGRATH and  
 ALL RISKS, LTD.

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT

11 CRUMP INSURANCE SERVICES, INC.  
 12 a corporation and DOES 1-50, inclusive,

13 Plaintiff,

14 vs.

15 MICHAEL P. MCGRATH, an individual,  
 16 ALL RISKS, LTD., a corporation, and  
 Does 1 through 50, inclusive

17 Defendants.

18 Case No. C 07 4636

**ANSWER OF DEFENDANTS MICHAEL P.  
 MCGRATH AND ALL RISKS, LTD. TO  
 PLAINTIFF'S COMPLAINT FOR  
 DAMAGES**

19  
 20  
 21 Defendants Michael P. McGrath (“McGrath”) and All Risks, Ltd. (“All Risks”)  
 22 (collectively “Defendants”) hereby answer the Complaint for Damages (“Complaint”) filed by  
 23 Plaintiff Crump Insurance Services, Inc. as follows:

24 **THE PARTIES**

25 1. In answer to Paragraph 1 of the Complaint, based upon information and belief  
 26 Defendants admit the allegations contained therein.

2. In answer to Paragraph 2 of the Complaint, based upon information and belief Defendants admit the allegations contained therein.

3. In answer to Paragraph 3 of the Complaint, Defendants admit the allegations contained therein.

4. In answer to Paragraph 4 of the Complaint, Defendants admit the allegations contained therein.

5. In answer to Paragraph 5 of the Complaint, Defendants admit that it correctly characterizes and summarizes the allegations and claims made in the Complaint, but deny that these allegations and claims have merit.

6. In answer to Paragraph 6 of the Complaint, Defendants admit that it correctly characterizes and summarizes the allegations and claims made in the Complaint, but deny that these allegations and claims have merit.

## **BACKGROUND FACTS**

7. In answer to Paragraph 7 of the Complaint, Defendants admit that McGrath signed an agreement entitled "Memorandum of Agreement" on or about June 7, 1996. Based upon information and belief, Defendants admit that Plaintiff Crump Insurance Services, Inc. is the successor in interest to Crump E&S of San Francisco Insurance Services, Inc. Defendants deny the remaining allegations in Paragraph 7 of the Complaint.

8. In answer to Paragraph 8 of the Complaint, Defendants admit that, on or about April 30, 2007, McGrath signed a “Broker Compensation Agreement.” Defendants deny the remaining allegations in Paragraph 8 of the Complaint.

9. In answer to Paragraph 9 of the Complaint, Defendants deny each and every allegation contained therein.

10. In answer to Paragraph 10 of the Complaint, Defendants state that the Memorandum of Agreement speaks for itself, and to the extent that the allegations in this Paragraph do not accurately state the contents of the Memorandum of Agreement, they are denied. In addition, to the extent that Paragraph 10 purports to allege that McGrath breached the Memorandum of Agreement, Defendants deny all such allegations.

1       11. In answer to Paragraph 11 of the Complaint, Defendants state that the  
2 Memorandum of Agreement speaks for itself, and to the extent that the allegations in this  
3 Paragraph do not accurately state the contents of the Memorandum of Agreement, they are  
4 denied. In addition, to the extent that Paragraph 11 purports to allege that McGrath breached the  
5 Memorandum of Agreement, Defendants deny all such allegations.

6       12. In answer to Paragraph 12 of the Complaint, Defendants state that the  
7 Memorandum of Agreement speaks for itself, and to the extent that the allegations in this  
8 Paragraph do not accurately state the contents of the Memorandum of Agreement, they are  
9 denied. In addition, to the extent that Paragraph 12 purports to allege that McGrath breached the  
10 Memorandum of Agreement, Defendants deny all such allegations.

11       13. In answer to Paragraph 13 of the Complaint, Defendants state that the  
12 Memorandum of Agreement speaks for itself, and to the extent that the allegations in this  
13 Paragraph do not accurately state the contents of the Memorandum of Agreement, they are  
14 denied. In addition, to the extent that Paragraph 13 purports to allege that McGrath breached the  
15 Memorandum of Agreement, Defendants deny all such allegations.

16       14. In answer to Paragraph 14 of the Complaint, Defendants state that the  
17 Memorandum of Agreement speaks for itself, and to the extent that the allegations in this  
18 Paragraph do not accurately state the contents of the Memorandum of Agreement, they are  
19 denied. In addition, to the extent that Paragraph 14 purports to allege that McGrath breached the  
20 Memorandum of Agreement, Defendants deny all such allegations.

21       15. In answer to Paragraph 15 of the Complaint, Defendants admit that McGrath  
22 accepted an offer of employment from All Risks, LLC on or about June 3, 2007. Defendants  
23 further admit that, prior to June 3, 2007, McGrath decided that he would terminate his  
24 employment with Plaintiff and begin employment with All Risks, LLC. Defendants deny the  
25 remaining allegations contained in Paragraph 15 of the Complaint.

26       16. In answer to Paragraph 16 of the Complaint, Defendants deny each and every  
27 allegation contained therein.

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1       17. In answer to Paragraph 17 of the Complaint, Defendants admit that McGrath  
2 decided to leave Plaintiff's employ to work for All Risks, LLC on or about May 31, 2007.  
3 Defendants deny the remaining allegations contained in Paragraph 17 of the Complaint.

4        18. In answer to Paragraph 18 of the Complaint, Defendants admit that McGrath  
5 terminated his employment with Plaintiff on or about June 3, 2007, and that McGrath notified  
6 Plaintiff that he was commencing employment with All Risks, LLC. Defendants admit that  
7 McGrath did not provide Plaintiff with 15 days advance notice of his termination, but deny that  
8 he was required to provide 15 days notice of his termination. Defendants deny the remaining  
9 allegations contained in Paragraph 18 of the Complaint.

19. In answer to Paragraph 19 of the Complaint, Defendants admit that McGrath has  
been an employee of All Risks, LLC since approximately June 4, 2007. Defendants deny the  
remaining allegations contained in Paragraph 19 of the Complaint.

## **FIRST CAUSE OF ACTION**

## **Breach of Contact – Against Defendant McGrath**

15        20. Defendants reallege and incorporate by reference their answers to Paragraphs 1  
16 through 19 of the Complaint.

17        21. In answer to Paragraph 21 of the Complaint, Defendant McGrath states that the  
18 Memorandum of Agreement speaks for itself, and to the extent that the allegations in this  
19 Paragraph do not accurately state the contents of the Memorandum of Agreement, they are  
20 denied. In addition, to the extent that Paragraph 21 purports to allege that McGrath breached the  
21 Memorandum of Agreement, McGrath denies all such allegations.

22. In answer to Paragraph 22 of the Complaint, Defendant McGrath denies each and  
23 every allegation contained therein.

24        23. In answer to Paragraph 23 of the Complaint, Defendant McGrath denies each and  
25 every allegation contained therein.

26        24. In answer to Paragraph 24 of the Complaint, Defendant McGrath denies each and  
27 every allegation contained therein.

1       25. In answer to Paragraph 25 of the Complaint, Defendant McGrath admits that  
2 Plaintiff did not give written consent for McGrath to utilize confidential information. Defendant  
3 McGrath denies the remaining allegations contained in Paragraph 25 of the Complaint.

4           26. In answer to Paragraph 26 of the Complaint, Defendant McGrath denies each and  
5 every allegation contained therein.

6           27. In answer to Paragraph 27 of the Complaint, Defendant McGrath denies each and  
7 every allegation contained therein.

8           28. In answer to Paragraph 28 of the Complaint, Defendant McGrath denies each and  
9 every allegation contained therein.

10        29. In answer to Paragraph 29 of the Complaint, Defendant McGrath denies each and  
11 every allegation contained therein.

12       30.     In answer to Paragraph 30 of the Complaint, Defendant McGrath denies each and  
13     every allegation contained therein.

14       31. In answer to Paragraph 31 of the Complaint, Defendant McGrath admits that he  
15 did not provide Plaintiff with 15 days advance notice of his termination, but denies that he was  
16 required to provide 15 days advance notice of his termination. Defendant McGrath denies the  
17 remaining allegations contained in Paragraph 31 of the Complaint.

18           32. In answer to Paragraph 32 of the Complaint, Defendant McGrath denies each and  
19 every allegation contained therein.

20       33. In answer to Paragraph 33 of the Complaint, Defendant McGrath denies each and  
21 every allegation contained therein.

## **SECOND CAUSE OF ACTION**

### **Misappropriation of Trade Secrets –Against All Defendants**

24       34. Defendants reallege and incorporate by reference their answers to Paragraphs 1  
25 through 33 of the Complaint.

26       35. In answer to Paragraph 35 of the Complaint, Defendants admit that McGrath had  
27 access to client lists and expiration lists during his employment with Plaintiff. Defendants lack  
28 sufficient information to admit or deny the allegation that McGrath had access to “underlying

1 client information” and “information regarding co-employees” during his employment with  
2 Plaintiff because the meaning and scope of those terms are unclear. Defendants deny the  
3 remaining allegations contained in Paragraph 35 of the Complaint.

4       36. In answer to Paragraph 36 of the Complaint, Defendants acknowledge that during  
5 the course of his employment with Plaintiff, McGrath was apprised of certain things attendant to  
6 his status as Plaintiff's employee, but Defendants lack sufficient information to admit or deny the  
7 allegation that Plaintiff provided "information" to McGrath because the meaning and scope of  
8 that term is unclear. Defendants deny the remaining allegations contained in Paragraph 36 of the  
9 Complaint.

10       37. In answer to Paragraph 37 of the Complaint, Defendants deny each and every  
11 allegation contained therein.

12       38. In answer to Paragraph 38 of the Complaint, Defendants deny each and every  
13 allegation contained therein.

14       39. In answer to Paragraph 39 of the Complaint, Defendants deny each and every  
15 allegation contained therein.

16       40. In answer to Paragraph 40 of the Complaint, Defendants deny each and every  
17 allegation contained therein.

18       41. In answer to Paragraph 41 of the Complaint, Defendants deny each and every  
19 allegation contained therein

20       42. In answer to Paragraph 42 of the Complaint, Defendants deny each and every  
21 allegation contained therein.

### **THIRD CAUSE OF ACTION**

## **Breach of Fiduciary Duty – Against Defendant McGrath**

24       43. Defendants reallege and incorporate by reference their answers to Paragraphs 1  
25 through 42 of the Complaint.

26       44. In answer to Paragraph 44 of the Complaint, Defendant McGrath denies each and  
27 every allegation contained therein.

45. In answer to Paragraph 45 of the Complaint, Defendant McGrath denies each and every allegation contained therein.

46. In answer to Paragraph 46 of the Complaint, Defendant McGrath denies each and every allegation contained therein.

47. In answer to Paragraph 47 of the Complaint, Defendant McGrath denies each and every allegation contained therein.

48. In answer to Paragraph 48 of the Complaint, Defendant McGrath denies each and every allegation contained therein.

49. In answer to Paragraph 49 of the Complaint, Defendant McGrath denies each and every allegation contained therein.

## **FOURTH CAUSE OF ACTION**

## **Intentional Interference with Prospective Economic Advantage (Clients) – Against All Defendants**

50. Defendants reallege and incorporate by reference their answers to Paragraphs 1 through 49 of the Complaint.

51. In answer to Paragraph 51 of the Complaint, Defendants deny each and every allegation contained therein.

52. In answer to Paragraph 52 of the Complaint, Defendants deny each and every allegation contained therein.

53. In answer to Paragraph 53 of the Complaint, Defendants deny each and every allegation contained therein.

54. In answer to Paragraph 54 of the Complaint, Defendants deny each and every allegation contained therein.

55. In answer to Paragraph 55 of the Complaint, Defendants deny each and every allegation contained therein.

56. In answer to Paragraph 56 of the Complaint, Defendants deny each and every allegation contained therein.

57. In answer to Paragraph 57 of the Complaint, Defendants deny each and every allegation contained therein.

## **FIFTH CAUSE OF ACTION**

## **Negligent Interference with Prospective Economic Advantage (Clients) – Against All Defendants**

58. Defendants reallege and incorporate by reference their answers to Paragraphs 1 through 49 of the Complaint.

59. In answer to Paragraph 59 of the Complaint, Defendants deny each and every allegation contained therein.

60. In answer to Paragraph 60 of the Complaint, Defendants deny each and every allegation contained therein.

61. In answer to Paragraph 61 of the Complaint, Defendants deny each and every allegation contained therein.

62. In answer to Paragraph 62 of the Complaint, Defendants deny each and every allegation contained therein.

63. In answer to Paragraph 63 of the Complaint, Defendants deny each and every allegation contained therein.

64. In answer to Paragraph 64 of the Complaint, Defendants deny each and every allegation contained therein.

65. In answer to Paragraph 65 of the Complaint, Defendants deny each and every allegation contained therein.

## SIXTH CAUSE OF ACTION

## **Intentional Interference with Prospective Economic Advantage (Employees) – Against All Defendants**

66. Defendants reallege and incorporate by reference their answers to Paragraphs 1 through 49 of the Complaint

67. In answer to Paragraph 67 of the Complaint, Defendants deny each and every allegation contained therein.

68. In answer to Paragraph 68 of the Complaint, Defendants deny each and every allegation contained therein.

69. In answer to Paragraph 69 of the Complaint, Defendants deny each and every allegation contained therein.

70. In answer to Paragraph 70 of the Complaint, Defendants deny each and every allegation contained therein.

71. In answer to Paragraph 71 of the Complaint, Defendants deny each and every allegation contained therein.

72. In answer to Paragraph 72 of the Complaint, Defendants deny each and every allegation contained therein.

## **SEVENTH CAUSE OF ACTION**

#### **Negligent Interference with Prospective Economic Advantage (Employees) –**

## Against All Defendants

73. Defendants reallege and incorporate by reference their answers to Paragraphs 1 through 49 of the Complaint.

74. In answer to Paragraph 74 of the Complaint, Defendants deny each and every allegation contained therein.

75. In answer to Paragraph 75 of the Complaint, Defendants deny each and every allegation contained therein.

76. In answer to Paragraph 76 of the Complaint, Defendants deny each and every allegation contained therein.

77. In answer to Paragraph 77 of the Complaint, Defendants deny each and every allegation contained therein.

78. In answer to Paragraph 78 of the Complaint, Defendants deny each and every allegation contained therein.

79. In answer to Paragraph 79 of the Complaint, Defendants deny each and every allegation contained therein.

1 Defendants also deny each and every allegation contained in Plaintiff's prayer for  
2 judgment described on page 12 of the Complaint.

3 **AFFIRMATIVE DEFENSES**

4 Defendants hereby submit their Affirmative Defenses to Plaintiff's Complaint as follows:

5 **FIRST AFFIRMATIVE DEFENSE**

6 **(Failure to State Cause of Action)**

7 The causes of action set forth in the Complaint fail to state facts sufficient to constitute  
8 any cause of action against Defendants.

9 **SECOND AFFIRMATIVE DEFENSE**

10 **(Waiver)**

11 The causes of action set forth in the Complaint are barred, in whole or in part, by the  
12 doctrine of waiver.

13 **THIRD AFFIRMATIVE DEFENSE**

14 **(Estopel)**

15 The causes of action in the Complaint are barred, in whole or in part, by the doctrine of  
16 estoppel.

17 **FOURTH AFFIRMATIVE DEFENSE**

18 **(Unclean Hands)**

19 The causes of action in the Complaint are barred, in whole or in part, by the doctrine of  
20 unclean hands.

21 **FIFTH AFFIRMATIVE DEFENSE**

22 **(Laches)**

23 The causes of action in the Complaint are barred, in whole or in part, by the doctrine of  
24 laches.

25 **SIXTH AFFIRMATIVE DEFENSE**

26 **(Statute of Limitations)**

27 The causes of action in the Complaint are barred by the applicable statute of limitations,  
28 including without limitation, California Code of Civil Procedure sections 335.1, 337, and 339.

**SEVENTH AFFIRMATIVE DEFENSE****(Privilege)**

With respect to the causes of action set forth in the Complaint, any act alleged to have been performed by Defendants, if performed at all, was privileged by legitimate business necessity and/or other reasons.

**EIGHTH AFFIRMATIVE DEFENSE****(Lack of Consideration)**

Any agreement alleged in the Complaint and any cause of action based thereon is void or voidable for lack of consideration.

**NINTH AFFIRMATIVE DEFENSE****(Illegality)**

Each alleged agreement on which Plaintiff bases its causes of action, or on which the causes of action are predicated, is illegal and/or in contravention of public policy.

**TENTH AFFIRMATIVE DEFENSE****(B & P § 16600)**

Each alleged agreement on which Plaintiff bases its causes of action, or on which the causes of action are predicated, is void under California Business & Professions Code section 16600.

**ELEVENTH AFFIRMATIVE DEFENSE****(Ambiguity)**

Any alleged agreement on which Plaintiff bases its causes of action fails because it is vague and ambiguous as to material terms.

**TWELFTH AFFIRMATIVE DEFENSE****(Punitive Damages)**

The imposition of punitive or exemplary damages in the circumstances of this case would violate the Constitution of the United States of America and the State of California and is barred by California Civil Code section 3294.

## **THIRTEENTH AFFIRMATIVE DEFENSE**

### (Good Faith)

Defendants aver that, at all times, they acted without malice and with a good faith belief in the propriety of their conduct.

WHEREFORE, Defendants pray that:

1. Plaintiff's Complaint be dismissed in its entirety with prejudice;
  2. Plaintiff take nothing herein; and
  3. Defendants be awarded costs and other such relief deemed just and proper by the Court, including, but not limited to an award for reasonable attorneys' fees.

Dated: September 27, 2007

CURIALE DELLAVERSON HIRSCHFELD  
& KRAEMER, LLP

By: \_\_\_\_\_ /s/ Zachary P. Hutton  
Stephen J. Hirschfeld  
Donna M. Rutter  
Zachary P. Hutton

Attorneys for Defendants  
MICHAEL P. MCGRATH and  
ALL RISKS, LTD.